

-#-

.FO 1

Date of Decision: 11th October 1995

SPECIAL CIVIL APPLICATION NO. 2163 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri D.U. Shah, Advocate, for the Petitioner

Shri Y.M. Thakkar, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 11th October 1995)

ORAL JUDGMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 12th January 1995 under sec. 20(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) cancelling the exemption granted under sec. 20(1) of the Act with respect to one parcel of land bearing Survey No. 462 (part) admeasuring 2 acres 25 gunthas situated

in the urban agglomeration of Rajkot (the disputed land for convenience) is under challenge in this petition under Art. 226 of the Constitution of India.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is the President of Anjaria Co-operative Housing Society Ltd. (the Society for convenience). It purchased the disputed land some time on or around 19th September 1975 by a registered sale deed. It applied for exemption under sec. 20(1) of the Act. By its order passed on 14th October 1977 by and on behalf of respondent No.1 herein, such exemption came to be granted under sec. 20(1) of the Act on certain terms and conditions. Its copy is at Annexure A to this petition. It may be mentioned that no condition required the petitioner to complete the construction of houses for its members within any stipulated time-limit. It further appears that the society was slow in raising construction of houses on the disputed land for its members. Thereupon the Additional Collector (ULC) at Rajkot, by his notice issued on 24th February 1994, directed the petitioners to show cause why further action should not be taken as houses for its members were not constructed. Its copy is at Annexure B to this petition. The society gave its reply thereto on 6th April 1994. Its copy is at Annexure C to this petition. It has been pointed out therein that out of 42 houses 40 houses came to be constructed and two only remained incomplete. It appears that the matter came to the notice of the concerned officer of respondent No.1. It was noticed by him that only two plots remained to be built upon. He found that the relevant condition of the exemption order at Annexure A to this petition came to be contravened. A show-cause notice was thereupon issued under sec. 20(2) of the Act on 2nd April 1994 calling upon the petitioner to show cause why action should not be taken for revocation of the exemption. Its copy is at Annexure D to this petition. The petitioner filed his reply its reply thereto on 23rd April 1994. Its copy is at Annexure E to this petition. It appears that the matter was kept earlier for hearing and none on behalf of the petitioner remained present. Thereupon its hearing was kept on 20th October 1994 and its intimation was given to the petitioner on 4th October 1994. Its copy is at Annexure F to this petition. It appears that the petitioner could not remain present. Thereupon by the order passed by and on behalf of respondent No.1 on 12th January 1995, the exemption order at Annexure A to this petition came to be revoked. A copy of the aforesaid order passed on 12th January 1995 is at Annexure G to this petition. The petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. As pointed out hereinabove, there was no condition prescribed in the exemption order at Annexure A to this petition

as to the time-limit in which the construction of houses for members of the society was to be completed. It was however expected of the society to complete such construction within reasonable time-limit. However, when the show-cause notice was issued on 2nd April 1994 at Annexure D to this petition, it was clear that, out of 42 plots, only 2 plots remained unconstructed. It was thus clear that 40 plots out of 42 plots were constructed. It transpires from the reply of 23rd April 1994 at Annexure E to this petition that construction of those 2 plots was also undertaken and it was to be completed shortly.

4. Shri Shah for the petitioner relying on para 8(5) of the petition states that the construction is complete. In that view of the matter, it was not necessary for respondent No.1 to pass the impugned order.

5. It may be noted that law is designed to help people and not to harass them. On the date of the show-cause notice at Annexure D to this petition, it was found that, out of 42 plots, 40 plots were already built upon. Only two plots remained for being built upon. That might have been so for diverse reasons like want of funds with members of the society to whom such plots were allotted. There could be thousand and one reasons for not carrying out construction on the uncompleted plots. However, when nearly 90 per cent of the available plots were constructed upon, it could not have been said that there was any breach of the conditions of the exemption order at Annexure A to this petition more particularly when no time-limit for completion of construction of houses for members of the society was prescribed.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure G to this petition cannot be sustained in law. It has to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by and on behalf of the State of Gujarat on 12th January 1995 at Annexure G to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
